

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ALINA FLATSCHER, Individually And On
Behalf Of All Others Similarly Situated,

Plaintiff,

v.

THE MANHATTAN SCHOOL OF MUSIC,

Defendant.

Case No.: 1:20-cv-4496 (KPF)

JURY TRIAL DEMANDED

AMENDED CLASS ACTION COMPLAINT

Plaintiff Alina Flatscher (“Plaintiff”) alleges against The Manhattan School of Music (“Defendant” or “MSM”) as follows:

1. Plaintiff brings this case as a result of MSM’s decision not to issue appropriate refunds for the Spring 2020 semester (“Spring 2020 Semester”) after canceling in-person classes and changing all classes to an online/remote format, closing most campus buildings, and requiring all students who could leave campus to leave as a result of decisions MSM made concerning what to do in the face of the Novel Coronavirus Disease (“COVID-19”).

2. Plaintiff, and the other students who enrolled at MSM, believed that they were enrolling in a fully in-person/on-campus program. When they enrolled, they were never notified or expressly apprised by MSM that it took the position that it could unilaterally convert some or all of the courses to online courses, with no recourse by the students. Nor were they ever notified of MSM’s position that it could convert from traditionally more expensive in-person courses to typically less expensive online courses with no refund of the difference to students. This is an unlawful and unfair business practice.

3. This decision deprived Plaintiff and the other members of the Tuition and Fees Class (defined below) from recognizing the benefits of: (i) face to face interaction with professors, mentors, coaches and peers; (ii) access to facilities such as music rooms, study rooms, libraries, practice rooms, concert halls, and recording studio rooms; (iii) student governance and student unions; (iv) extra-curricular activities and groups; (v) student music, student art, cultures, and other activities; (vi) social development and independence; (vii) participation in public performances; (viii) hands on learning and musical instruction; (ix) networking and mentorship opportunities; (x) in-person/hands-on classes, auditions, and rehearsals; (xi) private in-person/hands-on studio lessons, and other benefits and services in exchange for which they had already paid tuition and fees.

4. MSM has either refused to provide *pro rata* reimbursement for the tuition and fees, and other services that MSM failed to provide during the Spring 2020 Semester, or has provided inadequate and/or arbitrary reimbursement that does not fully compensate Plaintiff and members of the Tuition and Fees Class for their loss.

5. This action seeks a refund of the amount Plaintiff and other members of the Tuition and Fees Class are owed on a *pro-rata* basis, together with other relief as pled herein.

NATURE OF THE CASE

6. This is an action for breach of implied contract, unjust enrichment, conversion and violation of New York's consumer protection statute against MSM.

7. New York Courts have long recognized that the relationship between a university and its students is contractual.

8. The terms of the contract between university and student include the rights and obligations of the parties stated in the university's catalogue, website and other publications.

9. The interpretation of MSM's catalogues, website and other publications, like the interpretation of any contract, is a matter of law for the Court.

10. Here, the implied contract between the parties consists of (1) MSM's bulletins; (2) MSM's circulars; (3) MSM's website; (4) MSM's course catalogs; (5) the parties' course of performance; (6) the parties' course of dealing; (7) the custom and practice between the parties; and (8) the offer of admission and the acceptance of the admission.

11. Plaintiff entered into an implied contract with MSM upon her acceptance to an in-person/on-campus education which provided that Plaintiff would pay tuition and fees.

12. In exchange, MSM promised to provide in-person/hands-on classes (and lessons) live in a physical classroom, with associated services, to provide to Plaintiff (and the Tuition and Fees Class) an on-campus experience.

13. The materials disseminated by MSM to Plaintiff and the Tuition and Fees Class who were pursuing courses of study in the musical arts both describe and prescribe a rigorously campus-based model of hands-on education. As a result of limitations MSM imposed, MSM did not deliver the services that for which Plaintiff and the Tuition and Fees Class paid.

14. As a result, Plaintiff and the Tuition and Fees Class are entitled to a *pro rata* refund on tuition and fees paid for services, facilities, access and/or opportunities not delivered.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

16. This Court has personal jurisdiction over Defendant because Defendant conducts business in New York and has sufficient minimum contacts with New York.

17. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

18. Plaintiff is presently a resident of Austria and began attending MSM in the Fall of 2016 for a four-year course of study to receive a Bachelor of Music degree. Plaintiff attended MSM in the Spring of 2020 for her final semester.

19. Plaintiff made an international mark on the music stage at a very young age, performing at the Volksoper in Vienna for eight years, where she sang in *Antonia und der Reisteufel* by Christian Kolonovitz, *Madame Butterfly*, *Carmen*, *Tosca*, and many more. Some of her solo debut roles included Eva from Nicholas Maw's *Opera Sophie's Choice*, conducted by Leopold Hager, where she shared the stage with Angelika Kirchschrager. Plaintiff also sang at the Marven Museum & Garden, premiering Benjamin Carr's *Sacret Harmony*. She also performed as a soloist with Princeton's Dryden ensemble for two consecutive years.

20. MSM is a private conservatory located in New York, New York. MSM's 2019-2020 Course Catalog stated:

Manhattan School of Music is deeply committed to excellence *in education, performance*, and creative activity; to the humanity of the School's environment; to preparing all our students to find their success; and to the cultural enrichment of the larger community. A premier international conservatory, MSM inspires and empowers highly talented individuals to realize their potential. *We take full advantage of New York's abundant learning and performance opportunities*, preparing our students to be accomplished and passionate.

* * *

STUDENT USE OF MANHATTAN SCHOOL OF MUSIC FACILITIES

Tuition payment provides access to Manhattan School of Music facilities only when classes are in session, and does not include the intercessions or summer vacation. College students have limited access to Manhattan School of Music facilities on most Saturdays, when the Precollege Division is in session.

(Emphasis added).

21. MSM offered and promoted in-person, hands on curriculum, instruction and musical training in a vibrant New York City campus environment. For example, MSM made the following consistent and uniformed representations to Plaintiff and the Tuition and Fees Class on its website, brochures and other MSM materials for the academic year 2019/2020:

- *“Get involved on campus, build community, have fun, help out, and make new friends! “With over 900 students from nearly 50 countries, our students enjoy a diverse campus with a sense of community in the heart of the vibrant culture of New York City.”* (Emphasis added).
- *“Andersen Hall, our residence hall attached to the main building, is a vibrant place to study and live, with a strong sense of community. Undergraduate and graduate students from all over the world live on campus, where there are social activities, study groups, recreation, clubs, and student organizations.”* (Emphasis added).
- *“At Manhattan School of Music, you’re part of a dynamic atmosphere where you’ll thrive both musically and personally.”* (Emphasis added).
- *“Manhattan School of Music is deeply committed to excellence in education, performance, and creative activity; to the humanity of the School’s environment; and to the cultural enrichment of the larger community. A premier international conservatory, MSM inspires and empowers highly talented individuals to realize their potential. We take full advantage of New York’s abundant learning and performance opportunities, preparing our students to be accomplished and passionate performers, composers and teachers, and imaginative, effective contributors to the arts and society.”* (Emphasis added).
- *“. . . MSM takes full advantage of New York’s incomparable creative energy and the fact that the city is home to so many of the world’s great musical artists and venues. Students are exposed to an ongoing roster of luminaries invited to lead MSM’s high-*

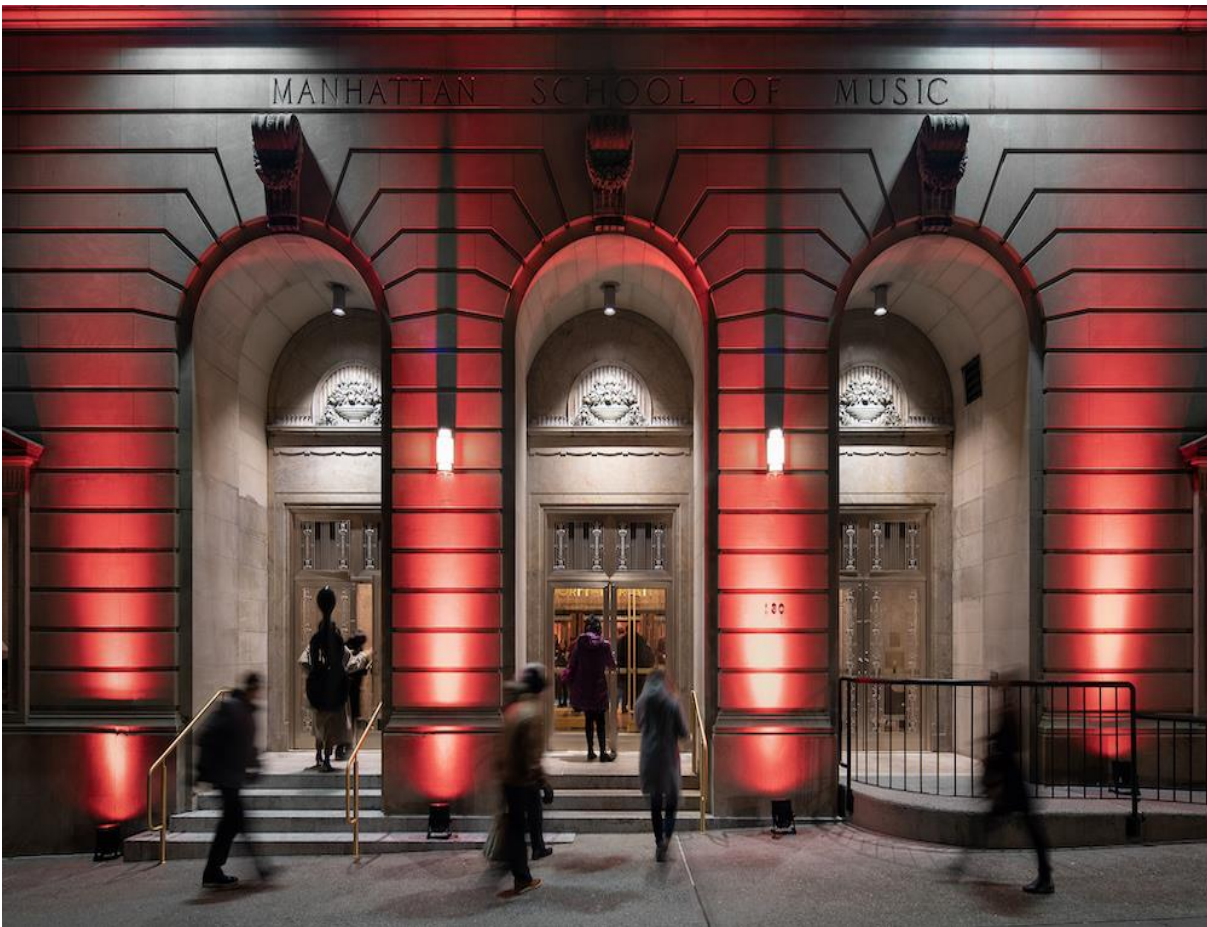
profile master class series, and singular performance opportunities at venerable venues such as Jazz at Lincoln CenterDivine, among others.” (Emphasis added).

- “The MSM neighborhood: A *‘college feel’ in New York City.*” (Emphasis added).
- “MSM is just a short stroll from the New York City subway’s extensive 1 train service and mere steps from Riverside Park, *thus allowing students to enjoy the best of two worlds*: the subway offers a gateway to the city’s vast cultural riches, while the Park offers walking and cycling trails and spectacular views of the Hudson River. It is a dynamic, multi-faceted urban setting, one that only boosts the energy and pulse of this dynamic and multi-faceted institution.”
- “But perhaps best of all – an intangible quality that truly distinguishes MSM – is the fact that Morningside Heights’ ‘neighborhood’ feel is itself reflected in MSM’s family of students, faculty, and administration. *It is there in the strong sense of community and collegiality that underscores all the music-making and learning and excitement of daily life at the School. We are all connected, and the supportive environment that extends out of that shared experience makes this a very special place to be.*”
- “More than 700 concerts a year, many of them free to the public.”
- “. . . MSM is not simply a top-tier music conservatory in one of the world’s great cities; it is also, thanks to its accomplished students and distinguished faculty, a first-rate performing arts center, one that provides New York City music lovers with more than 700 live performances a year. The MSM performance season, spanning September to April and encompassing a full range of classical, jazz, musical theater, and contemporary offerings – everything from the most intimate student recital to the most ambitious operatic production – is well-served by MSM’s nine performance venues and off-site partner venues.”

22. MSM’s website in 2019/2020 depicts (in photos) MSM’s campus life and its facilities. For example, MSM’s website states: “located at the academic heart of Manhattan’s Upper West Side, *the Manhattan School of Music campus is designed to meet all the needs of young performers.*” (Emphasis added).

23. MSM closed the campus during the Spring 2020 Semester.

Main Entrance on Claremont Avenue, just north of 122nd St.



Exterior View from 122nd St. & Claremont Ave.



Sakura Park, across the street from MSM's Campus



Neidorff-Karpati Hall Interior



Student Lounge

24. MSM closed the Student Lounge during the Spring 2020 Semester



Cafeteria

25. MSM represents that the “Mitzi Newhouse Pavilion is the Manhattan School of Music’s dining hall that serves breakfast, lunch, and dinner Monday through Saturday, and Sunday brunch, when school is in session. *Centrally located and spacious, it is often used for School receptions and social activities. Chartwells Division of the Compass Group is the contract food service provider for Manhattan School of Music.*”

26. MSM closed the cafeteria during the Spring 2020 Semester.



Andersen Residence Hall

27. MSM represents that “adjacent to the main building is the residence hall, which, since its inauguration in 2001, has created a dynamic vertical campus for Manhattan School of Music. A nineteen-story building of performance, academic, administrative offices, and residential spaces, the G. Chris and SungEun *Andersen Hall includes space for 550 students, and a floor of 24-hour practice rooms.*”

28. MSM closed the Andersen Residence Hall during the Spring 2020 Semester.





Libraries

29. MSM represents that the “Peter Jay Sharp Library contains printed music, books, sound recordings, DVDs, periodicals, MSM Archives, and much more. The Evelyn Sharp Performance Library contains performing materials for orchestra, wind ensemble, and brass ensemble, contemporary ensemble and chorus.”

30. MSM closed the libraries during the Spring 2020 Semester.



Performance Spaces

31. MSM represents that the MSM “has nine main performance spaces which host a variety of performances throughout the year.”

32. MSM closed the Performance Spaces during the Spring 2020 Semester.











33. Further, MSM's website also touts hands-on professional audio and video recording services to the MSM student body:

MSM's Myers Recording Studio offers professional audio and video recording services to the MSM community and public at large.

The Studio features a state-of-the-art digital multi-track facility capable of recording events in all of the School's main performance spaces, including orchestra and jazz ensemble concerts, operas, musical theatre performances, master classes, and recitals.

The Studio and its staff work to ensure that every student leaves MSM with a portfolio of professional audio and video recordings that are representative of their musical advancements over the course of their study and serve to further their professional careers.

Studio tours, panel discussions and workshops on recording and recording-related topics such as How to Make the Most Out of Your Recordings and Introduction to Sound Recording for Musicians are offered on an ongoing basis.

34. MSM closed the Myers Recording Studio during the Spring 2020 Semester.

35. MSM's offer of admission to Plaintiff emphasized the vibrant campus community aspect of the conservatory:

Admission Results

Congratulations!

On behalf of the Faculty and the Admissions Committee, I am delighted to offer you admission to Manhattan School of Music. You are admitted into the **Bachelor of Music – No Previous College (BM)** Program in Classical Voice – Soprano for the 2016-2017 academic year, commencing Fall 2016.

You were selected from an impressive pool of close to 3,000 applicants. You will be *joining a select group of talented students from around the world* whose goals and ambitions are much like your own and *collectively contribute to a vibrant campus community*. At MSM you will be enriched by our musical and academic offerings, nurtured and challenged by our distinguished faculty, and inspired to reach heights in your own musical and personal development. [Emphasis added].

36. Plaintiff accepted MSM's offer of admission to earn a music degree that included the benefit of: (i) face to face interaction with professors, mentors, coaches and peers; (ii) access to facilities such as music rooms, study rooms, libraries, practice rooms, concert halls, and recording studio rooms; (iii) student governance and student unions; (iv) extra-curricular activities and groups; (v) student music, student art, cultures, and other activities; (vi) social development and independence; (vii) participation in public performances; (viii) hands on learning and musical instruction; (ix) networking and mentorship opportunities; (x) in-person/hands-on classes, auditions, and rehearsals; and (xi) private in-person/hands-on studio lessons.

37. Plaintiff was denied these benefits when MSM forced Plaintiff and the Tuition and Fees Class to continue studies online and closed the campus during the Spring 2020 Semester.

38. MSM uses an educational calendar of two semesters (Fall and Spring).

39. Spring recess was from March 2 to March 15, 2020.

40. On March 23, 2020, MSM announced that all classes were moving online.

41. MSM also announced that Spring recess would be extended to three weeks instead of two weeks.

42. MSM announced that classes were extended to May 15 which would coincide with the same week of final exams, but the classes did not meet with regularity during that extra week.

43. On May 15, 2020, MSM cancelled its graduation ceremonies and instead held an on-line “toast” and no graduate’s names were announced. Plaintiff paid a \$125 graduation fee, yet instead of a graduation ceremony, Defendant converted the graduation ceremony to on-line toast. The previous year’s graduation (with the same fee) was held at The Riverside Church in Morningside Heights in NYC:



44. MSM suspended or restricted in-person on-campus activities starting no later than March 23, 2020.

45. Plaintiff and members of the Tuition and Fees Class were deprived of the benefits of: (i) face to face interaction with professors, mentors, coaches and peers; (ii) access to facilities such as music rooms, study rooms, libraries, practice rooms, concert halls, and recording studio

rooms; (iii) student governance and student unions; (iv) extra-curricular activities and groups; (v) student music, student art, cultures, and other activities; (vi) social development and independence; (vii) participation in public performances; (viii) hands on learning and musical instruction; (ix) networking and mentorship opportunities; (x) in-person/hands-on classes, auditions, and rehearsals; (xi) private in-person/hands-on studio lessons, and other benefits and services in exchange for which they had already paid tuition and fees.

46. To date, MSM has failed and continues to fail to refund any portion of Plaintiff's and the Tuition and Fees Class members' Spring 2020 Semester tuition payment and other fee charges.

47. Moreover, Plaintiff and members of the Tuition and Fees Class were deprived of fully utilizing services for which they already paid, including, but not limited to, access to campus facilities (*see* MSM 2019-2020 Course Catalog: "Tuition payment provides access to Manhattan School of Music facilities"), which included in-person/hands-on instruction.

MSM's Tuition and Meal Costs:

48. For the school calendar year 2019/2020, MSM charged the following Tuition and Meal Plan charges:

Manhattan School of Music

STUDENT ACCOUNTS OFFICE, ROOM A-440/A-441 | 130 CLAREMONT AVENUE, NEW YORK, NY 10027-4698
TEL/FAX 917-493-4467 OR 4464 | BURSAR@MSMNYC.EDU | MSMNYC.EDU

TUITION AND FEES

This information can be used to help calculate the cost of attending Manhattan School of Music this year.

FULL YEAR COSTS

| | |
|---------------------|-------------|
| Full Tuition | \$48,280.00 |
| General Fees | \$850.00 |
| Health Insurance | \$2,430.00 |

| | |
|---------------------------|------------|
| Meal Plan-Resident | |
| Gold | \$5,405.00 |
| Silver | \$3,785.00 |
| Bronze | \$2,705.00 |
| Commuter Meal Plan | \$282.00 |

| | |
|--------------------------------|-------------|
| Residence Hall Charges* | |
| Econ Double | \$9,460.00 |
| Double | \$10,790.00 |
| Single | \$14,720.00 |
| Large/Premium Single | \$15,430.00 |

*Contact the Residence Life Office about your room selection

It is necessary to remit payment and/or complete and return ALL REQUIRED DOCUMENTATION to the Student Accounts Office by JULY 22, 2019.

Spring 2020 Semester
All tuition and other charges not covered by Financial Aid or a finalized Payment Plan will be due December 9, 2019.

FALL PAYMENT DUE July 22, 2019

| | |
|---------------------|----------------------------|
| Fall tuition | \$24,140.00 |
| General Fees | \$850.00 |
| Health Insurance | \$2,430.00 |
| | (Charge for the Full Year) |

| | |
|---------------------------|------------|
| Meal Plan-Resident | |
| Gold | \$2,703.00 |
| Silver | \$1,893.00 |
| Bronze | \$1,353.00 |
| Commuter Meal Plan | \$141.00 |

| | |
|----------------------|------------|
| Housing | |
| Dorm/Econ-Double | \$4,730.00 |
| Dorm/Double | \$5,395.00 |
| Single | \$7,360.00 |
| Large/Premium Single | \$7,715.00 |

Invoices for the Fall 2019 semester will be generated and available online by mid-late June.

It is necessary to return a copy of your Fall 2019 invoice and completed College Student Financial Responsibility Agreement by the due date EVEN IF YOUR CHARGES ARE FULLY COVERED BY FINANCIAL AID, SCHOLARSHIPS OR PAYMENT PLAN.

If items are missing, you WILL NOT be permitted to begin classes or lessons.

A late fee of \$250.00 will be charged after July 23 for unpaid tuition. A late waiver fee of \$100 will be added for health insurance waivers processed after August 15, 2019. Waiver applications submitted after October 1, 2019 will be considered on a case by case basis and will incur a \$250 late fee.

MSM's Meal Plan

49. The following is a list of MSM's meal plans:

Meal Plan

All students are required to participate in a declining balance meal plan; the amount of the plan is different for commuting students and students residing in the residence hall. The charge for the meal plan will be on the student's invoice and the monies will be applied to their ID card. [Emphasis added].

50. The annual cost of the meal plans are as follows: (i) Commuting Students: \$282 and (ii) Resident Students – (a) Bronze: \$2,705; (b) Silver: \$3,785; or (c) Gold: \$5,405.

51. As a commuting student for the Spring 2020 Semester, Plaintiff paid the mandatory fee for a Commuter Meal Plan of \$141 but has received no refund.

MSM Fees

52. Pursuant to the MSM 2019-2020 Course Catalog, the following are listed fees MSM charges its admitted students:

- General Student Fee: \$850
- Student Health Insurance (annual fee, administered by Student Engagement): \$2,430
- Doctoral Program Fees (Doctoral Candidates only)
- Thesis Research Fee: \$1,200 (per semester)
- Thesis Examination Fee: \$120
- Application/Audition Fee: \$125
- Credits Exceeding Degree Credit Limits (per credit): \$750
- Course Audit (See Office of the Registrar): \$500
- Damage/Judicial Fines: TBA
- Graduation Fee: \$125
- Instrument Maintenance Fee (per semester): \$100
- Qualifying Examination Fee (per exam): \$35

53. Pursuant to the MSM 2019-2020 Course Catalog: “Annual Fees are required of all students.”

54. Plaintiff was charged the following fees: (i) Student Health Insurance; (ii) Qualifying Examination Fee; (iii) Graduation Fee; (iv) Commuter Meal Fee; and (v) General Student Fee but has received no refund.

MSM’s Facilities

55. MSM specifically states that tuition payment provides access to MSM’s facilities, which Plaintiff and the Tuition and Fees Class bargained for but were deprived of:

STUDENT USE OF MANHATTAN SCHOOL OF MUSIC FACILITIES

Tuition payment provides access to Manhattan School of Music facilities only when classes are in session and does not include the intercessions or summer vacation. College students have limited access to Manhattan School of Music facilities on most Saturdays, when the Precollege Division is in session. Manhattan School of Music reserves the right to enforce rules for facilities usage at all times. [Emphasis added].

Plaintiff's Tuition Payments

56. Plaintiff was enrolled as a full-time student for the Spring 2020 Semester at MSM.

57. As a precondition for enrollment, Plaintiff was required to and did pay all invoiced tuition and certain fees, as did all members of the Tuition and Fees Class.

58. Below is a break-down of Plaintiff's payments:

| Receipt Number | Date | Location | Payments |
|----------------|------------|-------------------------------------------|------------|
| 4764 | 03/05/2020 | Manhattan School of Music Online Payments | \$8,127.00 |
| 4523 | 02/04/2020 | Manhattan School of Music Online Payments | \$8,127.00 |
| 4320 | 01/20/2020 | Manhattan School of Music Online Payments | \$35.00 |
| 4319 | 01/20/2020 | Manhattan School of Music Online Payments | \$8,127.00 |
| 3390 | 10/21/2019 | Manhattan School of Music Online Payments | \$5,271.00 |
| 3094 | 09/19/2019 | Manhattan School of Music Online Payments | \$5,271.00 |
| 2759 | 08/19/2019 | Manhattan School of Music Online Payments | \$5,271.00 |
| 2108 | 07/09/2019 | Manhattan School of Music Online Payments | \$35.00 |
| 2107 | 07/09/2019 | Manhattan School of Music Online Payments | \$5,241.00 |
| 2064 | 03/06/2019 | Manhattan School of Music Online Payments | \$5,509.04 |
| 1887 | 02/04/2019 | Manhattan School of Music Online Payments | \$5,509.12 |
| 1627 | 01/01/2019 | Manhattan School of Music Online Payments | \$5,509.12 |

59. Plaintiff was enrolled in the Spring 2020 Semester in the following classes that required hands-on, in-person attendance:

| Course | Description | Credits | Credit Earned |
|------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------------|
| JC1812 Studio Techniques 2: Introduction to Digital Audio Recording Studio | “Independent lab time is provided for <i>hands-on work in sound designing and patch editing</i> . Exposure to current popular synthesizers and software.” | 2 | 2 |
| JURY.BMSR | Jury – BM Graduation – This course is a final <i>in-person performance/examination</i> by a MSM student in front of a panel of jurors, consisting of faculty at MSM. MSM students attend private lessons throughout the year, and they perform at the end of a semester (or the year) to illustrate progress before the panel and receive constructive criticism. | 0 | 0 |
| ME1000 | <i>Setting the Stage Workshop</i> -- A required course that is led by the Center of Music Entrepreneurship Department (“CME”) at MSM. <i>CME would invite guest speakers and conduct workshops</i> to teach MSM students about the industry. | 0 | 0 |
| ME1500 Practical Foundations: Entrepreneurial Leadership Skills | Focusing on creativity, innovation, value creation, and impact, this core course explores the basics of establishing a professional career. The class covers marketing, communication, financing, community engagement, and project management—for both new and traditional career paths. This is a required class for all undergrads. | 2 | 2 |
| ME1700 | <i>Becoming An Arts Ambassador</i> -- This one credit class is open to undergraduate and graduate students and meets Fridays from 12:30 to 2 pm. The course content includes an overview of arts advocacy, which includes <i>performance and speaking module that will be adaptable to the following types of events</i> : (1) Donor cultivation events; (2) Donor retention events; (3) Recruitment; (4) Admissions presentations; and (5) Corporate and business incentive entertainment. | 1 | 1 |
| PT2061-2062 | <i>A class for performers</i> that will cover: anxiety-reducing techniques, concentration, and | 2 | 2 |

| Course | Description | Credits | Credit Earned |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------------|
| Performance Techniques | memorization techniques, skills for developing peak performance. | | |
| SP1071 Musical Theater Lab | The main goals of Musical Theater Lab are that students learn solid musical theater technique [and] build their musical theater repertory. <i>There is a small studio performance at the end of the semester.</i> | 0 | 0 |
| VX0320-0330 English and American Vocal Literature | A survey through <i>performance</i> and discussion of the origins and development of the art song in the British Isles and the United States, plus non-American, non-British song in English. Prerequisite: Senior Standing | 2 | 2 |
| VX0800 Undergraduate Opera Theater | This course explores the art of performing from beginning acting exercises and songs through monologues, opera scenes, and role studies. <i>Enrollment includes participation in the accompanying opera seminar.</i> | 1 | 1 |
| VX0901-0902 Acting | Basic techniques used in acting for opera and theater. Designed especially for Voice majors contemplating a career on the stage. <i>In-depth character study and stage techniques will be the focus of this class.</i> | 1 | 1 |
| MT4000 Private Voice | <i>Private instruction in proper vocal performance technique,</i> ¹ including proper execution, diction and interpretation, performance skills, repertoire selection and stylization. Private voice lessons are critical for the technical and interpretive development of the professional singer. Your Voice Faculty emphasizes healthy practice techniques that preserve vocal health and develop technical flexibility and vocal longevity. <i>Each private voice instructor tailors her/his lessons to the specific needs, level, and voice type of the individual student.</i> In the conservatory structure, lessons may follow the needs of a timeline regarding preparation of materials and mastery of skills to aid the student in developing their technique to meet the | 4 | 4 |

¹ According to Plaintiff, there were connection issues and technical difficulties regarding private lessons given on-line. Because there were so many difficulties in terms of lagging audio and/or video feed, conducting private lessons on-line were impossible.

| Course | Description | Credits | Credit Earned |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------------|
| | demands of their numerous performance classes and performance opportunities while at MSM. | | |
| VX RCTL | Voice Recital -- <i>A full-length Graduation Recital in which at least one work must be in a 20th-century style and approximately half of the works must be composed for the particular instrument.</i> | 0 | 0 |

60. Many other courses, if not all courses at MSM (as it is a musical conservatory), require in-person/hands-on instruction:

| Course | Description | Credits |
|---------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| AC2031-2032, AC2041-2042 Collaborative Piano Practicum 1 credit per semester Collaborative Piano Faculty | The opportunity for <i>hands-on learning in vocal and instrumental studios</i> on a weekly basis, investigating the relationship of other performers' techniques to one's own accompanying facility and repertory. Special assignments to opera projects and master classes. | 1 |
| CT2700 Performing with Electronics 1 | The CT 2700 series provides students <i>with hands-on experience performing and creating with technology</i> , giving them access to an increasingly important body of technical and musical skills in digital music software and hardware, and equipping them with a knowledge of current practices in the field. CT 2700 is a prerequisite for CT 2701, as are both for CT 2702. Exceptions are considered based upon experience, knowledge, and desire. Please approach the instructor directly. | 2 |
| JC1811 Studio Techniques Introduction to MIDI Sequencing Studio | Introduction to MIDI and MIDI sequencing using Macintosh based systems. Creative application of synthesizers and MIDI systems to contemporary jazz, commercial music and classical music. Principles of audio engineering, multi-track recording, mixing, and sampling are discussed. <i>Independent lab time is provided for hands-on practice in MIDI composition and recording techniques.</i> Exposure to current popular synthesizers and software. | 2 |

| Course | Description | Credits |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| JC1812 Studio Techniques 2: Introduction to Digital Audio Recording Studio | Continuation of MIDI sequencing and studio techniques. Introduction to digital multitrack recording techniques using Pro Tools-based Digital Performer and the Tascam DA-88. Survey of notation, editing, and other MIDI software. <i>Independent lab time is provided for hands-on work in sound designing and patch editing. Exposure to current popular synthesizers and software.</i> | 2 |
| JC1813 Studio Techniques 3: Analog and Digital Synthesis | Basics of analog and digital synthesis and sound designing, with emphasis on the practical application of the synthesizer to contemporary jazz and commercial music. Applications of basic principles to abstract “Classical” sound design. Continuation of MIDI sequencing and studio techniques. <i>Independent lab time is provided for hands-on work in sound designing and patch editing.</i> Exposure to current popular synthesizers and software. | 2 |
| JC1814 Advanced Studio Recording: Scoring to Picture | Advanced application of MIDI sequencing and digital audio recording techniques. Introduction to sampling technology, additional MIDI sound sources, and advanced synthesis techniques. Emphasis on scoring techniques for film, TV, and multimedia, as well as combining acoustic and electronic instruments. <i>Independent lab time is provided for hands-on work in MIDI composition, digital audio recording, and scoring to picture.</i> | 2 |
| JC1911-1912 Advanced Studio Composition and Scoring | Advanced MIDI software applications, sound designing, sampling, and studio techniques. <i>In-depth exploration of various creative and technical considerations encountered in the MIDI studio.</i> Topics include principles of creating contemporary rhythm tracks, expressive and dynamic considerations of sequencing, MIDI orchestrating, scoring for film and TV, multimedia, SMPTE, sampling, and combining acoustic and electronic instruments. Students are exposed to a wide range of current MIDI instruments and software. <i>Additional independent lab time is provided for hands-on work.</i> | 3 |
| DM4750 The Artist Pedagogue | Teaching proficiency related to the implementation of listening skills, improvisation, and rehearsal and directing techniques from beginning to advanced levels will be developed. Class discussion will include: who should teach jazz and why, the value of a degree in jazz, the state of music education in America, and judging a jazz festival. <i>Hands on training will be stressed by giving clinics and workshops through the Manhattan School of Music Outreach and Precollege programs as well as the Carnegie Hall and NARAS educational programs.</i> The course’s pedagogical | 3 |

| Course | Description | Credits |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| | concept is unique in its sequential design that integrates the entire curriculum, its ability to train and empower teachers effectively to present and reinforce musical applications, and the program's strong and affirming message that cements concepts through an array of interactive and musical experiences. | |
| MT1600 Career Development | This course is designed to prepare students for their professional careers as musical theatre performers. <i>The class combines hands on projects including website building, personal budget management and professional networking with guest visits from industry professionals.</i> | 2 |
| PT1620 Alexander Technique | A study of the Alexander Technique and its application to playing/singing. Addresses both individual and universal physical habits that deter easeful, healthy performing. <i>Taught through hands-on work, reading, anatomy, and application of the technique while performing. Short individual sessions in addition to group class.</i> | 2 |
| MT0004 Acting 4, Devised Theatre Practice | This course will be a hands-on dive into the experience of creating a work of Devised Theatre. Each class will begin with a warm-up that will alternate between technical exercises (physical, vocal, etc.) and investigatory (sensory awareness and concentration exercises). Eventually students will be in charge of leading their own warmups. The body of the course will be devoted to the creation of original Devised Theatre group pieces. <i>Devised Theatre is essentially ensemble-work and a major theme of the course will be the techniques of partnering (duos, trios and large groups).</i> Students will create scenes, songs and movement. Writing will be an essential component of the course. Students will be writing in each class – “Devising” ideas will come out of their timed writing, reflections on the work they are doing in the class and ideas that emerge out of group discussion. The course will culminate in final group pieces, which will be shown to the class, discussed and evaluated, then worked on again for a second showing. | 2 |
| CT 1999 Composer Workshop/Reading | The Composer Workshop/ Reading happens twice each semester. <i>For the workshops, MSM composition students submit pieces and/or sketches that are played by CPP students.</i> For the readings, CPP students perform assignments submitted by members of MSM's orchestration classes. The course provides a platform for live hearings of student works. CPP students are expected to perform at a reasonable level, and to contribute constructively to class discussions. | 4 |

| Course | Description | Credits |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| JC1400 Brazilian Music: History, Styles, and Analysis | This course is designed to introduce and examine Brazilian music from both academic and performance perspectives. Through readings of articles and textbooks, video excerpts and documentaries, <i>field recordings and live demonstration, students are led to observe the connections</i> between historical facts and the formation of each style in Brazilian music, in a journey through almost 500 years of history/music making. As the students are first and foremost performers, a primary focus of the course is the incorporation of the Brazilian music universe of rhythms, phrasing, and repertoire into their developing styles. The aim is to produce a performer who is well informed not only about musical components and necessary skills for performance, but also about the history and context in which Brazilian music developed. | 3 |
| MH1841 World Music I | An introduction to the principles of ethnomusicology joined to a survey of the music of the following non-Western cultures: sub-Saharan Africa, Native America, the Islamic world, and the Indian subcontinent. The study of this music will be at once technical and cultural. <i>The course is enriched by visits from guest artists who present the music in live performance.</i> Emphasis will also be given to seeing how composers, world-wide, are currently making use of elements of the traditional music from these cultures. | 3 |
| RP1360 Piano Elective | <i>Participation in a studio performance class is required upon completion of the semester.</i> | 1 |
| TH2740 Bach and Variation Through Counterpoint | This course examines in depth three late esoteric works of J.S. Bach: The Goldberg Variations, A Musical Offering, and Art of the Fugue. Additional works will include the Fourteen Canons on the Goldberg Bass, and other short works of J.S. Bach. <i>Class participation includes in-class performances, the composing of short pieces after these works, and a Mid-Term and Final Examination.</i> | 2 |

61. Pursuant to the MSM 2019-2020 Course Catalog:

Concert Attendance (CA1000)

Attending concerts is a vital and important part of the total educational experience. MSM Concert attendance is a great opportunity to hear music brought to life by the entire community as well as distinguished visiting artists. The administration chooses a wide array of performances to meet the concert attendance requirement.

For undergraduate students (BM/DP), *concert attendance is required for six semesters out of eight*; students must register for it their first semester and each subsequent semester until the requirement is fulfilled.

The requirement for transfer students is pro-rated: students admitted into the second year of an undergraduate program must complete four semesters out of six; into the third year, two semesters out of four.

For graduate students, concert attendance is required for two semesters out of four (MM/ PG) or one semester out of two (PS); students must register for it their first semester and each subsequent semester until the requirement is fulfilled. Students registered for concert attendance are required to attend seven major concerts and/or master classes per semester. A list of approved concerts is available from the Office of the Registrar at the beginning of each semester. Performance in any portion of an approved concert does not count toward fulfilling the Concert Attendance requirement.

Verification of Attendance

A student's Manhattan School of Music ID card is the mechanism by which attendance at an approved concert is verified. At the end of the concert, house ushers will electronically scan the barcode on the ID which will be recorded in a central database.

A student is registered for Concert Attendance by the Office of the Registrar each semester until the requirement has been satisfactorily met. Failure to attend the appropriate number of concerts by the end of the semester will result in a failing grade. If a student does not intend to complete Concert Attendance in a particular semester, it is the student's responsibility to drop Concert Attendance from his or her official schedule. Failure to do so will result in a failing grade.

Additionally, if it is discovered that a student has misrepresented his or her attendance at a concert, the student will receive an F for the semester. In all cases, the grade remains on the student's official transcript. [Emphasis added].

CLASS REPRESENTATION ALLEGATIONS

62. Plaintiff brings this action on behalf of herself and for a class of persons defined as:

Tuition and Fees Class

All students who enrolled at The Manhattan School of Music for the Spring 2020 Semester, and who paid tuition, mandatory fees, or voluntary fees for services and privileges that The Manhattan School of Music has failed to fully provide, and whose tuition and/or fees have not been refunded.

63. The exact number of members of the Tuition and Fee Class is believed to be so numerous that joinder of all members into one action is impractical. Upon information and belief, the Tuition and Fees Class includes all students who enrolled at any school or department of MSM for the Spring 2020 Semester.

64. The claims raised by Plaintiff are typical of the claims of the Tuition and Fees Class and all claims are based on the same general legal theories and claims for relief.

65. There are common questions of law and fact that relate to and affect the rights of each member of the Tuition and Fees Class and these questions predominate over any questions affecting only individual members. The common issues include, but are not limited to:

(a) Whether Plaintiff and the other members of the Tuition and Fees Class paid tuition and other fees to MSM for the Spring 2020 Semester;

(b) Whether MSM accepted the tuition and other fees from Plaintiff and the other members of the Tuition and Fees Class for the Spring 2020 Semester;

(c) Whether MSM failed to deliver what it agreed to deliver to Plaintiff and the other members of the Tuition and Fees Class;

(d) Whether Plaintiff and the other members of the Tuition and Fees Class have been deprived of the benefit of their bargain with MSM;

(e) Whether MSM breached its agreement with Plaintiff and the other members of the Tuition and Fees Class;

(f) Whether in the alternative, MSM has been unjustly enriched by its retention of the tuition and fees it received while it simultaneously failed to deliver to Plaintiff and the other members of the Tuition and Fees Class what it promised and represented it would deliver;

(g) Whether, in the alternative, MSM has converted the property of Plaintiff and the other members of the Tuition and Fees Class:

(h) Whether MSM has violated New York's consumer protection laws; and

(i) Whether in equity and good conscience MSM should be compelled to refund to Plaintiff and the other members of the Tuition and Fees Class all or a portion of the tuition and fees it is holding.

(j) Whether injunctive relief is available including enjoining MSM from retaining the pro-rated, unused monies paid for Tuition and Fees.

66. Plaintiff's claims are typical of the claims of the members of the Tuition and Fees Class. Each claim asserted by the Tuition and Fees Class arises from the same facts, circumstances, and MSM's course of conduct and practices. Plaintiff's legal theories are the same that will be asserted on behalf of the Tuition and Fees Class; namely, claims arising from a breach of an implied contract or, in the alternative, for unjust enrichment, conversion or violation of New York's consumer protection statute.

67. There is no conflict between Plaintiff and other members of the Tuition and Fees Class with respect to this action or with respect to the claims for relief set forth herein.

68. Plaintiff will fairly and adequately protect the interests of all Tuition and Fees Class members in the prosecution of this action and in the administration of all matters relating to the claims raised in this lawsuit. Plaintiff is similarly situated with all Tuition and Fees Class members who paid tuition and other fees for the Spring 2020 Semester, and Plaintiff has sustained damages similar to those sustained by the members of the Tuition and Fees Class sought to be represented.

69. Plaintiff has retained the services of attorneys who are experienced and capable in prosecuting class action lawsuits. Neither Plaintiff nor Plaintiff's counsel have any interests which might prevent them from vigorously pursuing this action.

70. Maintaining this action as a class action is superior to all other available methods of adjudication because it will promote the convenient administration of justice and will achieve a fair and efficient adjudication of the controversy in this matter, which will affect the interests of hundreds of potential class members.

71. The prosecution of separate actions by or against individual members of the Tuition and Fees Class would create a risk of inconsistent or varying adjudications that would confront MSM with incompatible standards of conduct.

72. The dollar amount of the individual claims is insufficient to support separate actions, thus a multitude of potential claimants have small potential damages that require aggregation in order to be pursued.

73. This lawsuit is manageable as a class action because the proofs are essentially the same for all members of the Tuition and Fees Class on all of the principal issues.

74. MSM's conduct was the same as to all members of the Tuition and Fees Class.

75. The Tuition and Fees Class members do not have a significant interest in controlling the prosecution of separate actions involving the subject matter of this litigation, especially because the individual claims are too small individually to warrant litigating their claims on an individual basis.

FOR A FIRST COLLECTIVE CAUSE OF ACTION

(BREACH OF IMPLIED CONTRACT)

76. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

77. Plaintiff brings this count on behalf of the Tuition and Fees Class (which includes the meal plan charges) for damages related to the payment of tuition and fees.

78. The implied contract between the parties consists of (1) MSM's bulletins; (2) MSM's circulars; (3) MSM's website; (4) MSM's course catalogs; (5) the parties' course of performance; (6) the parties' course of dealing; (7) the custom and practice between the parties; and (8) the offer of admission and the acceptance of the admission.

79. Plaintiff and each member of the Tuition and Fees Class accepted MSM's offer of admission to attend MSM. On information and belief, Plaintiff alleges there was no express agreement memorializing these offers of admission and acceptances.

80. Plaintiff and members of the Tuition and Fees Class entered into implied contracts with MSM where Plaintiff and other members of the Tuition and Fees Class would pay tuition and fees for or on behalf of students and, in exchange, MSM would provide them the full rights and privileges of student status, including but not limited to: (i) face to face interaction with professors, mentors, coaches and peers; (ii) access to facilities such as music rooms, study rooms, libraries, practice rooms, concert halls, and recording studio rooms; (iii) student governance and student unions; (iv) extra-curricular activities and groups; (v) student music, student art, cultures, and other activities; (vi) social development and independence; (vii) participation in public performances; (viii) hands on learning and musical instruction; (ix) networking and mentorship opportunities; (x) in-person/hands-on classes, auditions, and rehearsals; and (xi) private in-person/hands-on studio lessons.

81. Plaintiff and members of the Tuition and Fees Class paid monies to MSM in the form of tuition and fees.

82. The parties' prior course of conduct, prior course of performance and custom and practice demonstrates that MSM offered to provide, and members of the Tuition and Fees Class accepted and expected to receive, live in-person/hands-on instruction along with the on-campus experience of campus life.

83. The Spring 2020 Semester began on or about January 13, 2020 with Plaintiff and the Tuition and Fees Class receiving live on-campus, in-person/hands-on instruction in a physical classroom on the campus.

84. Each day for the weeks, months, and years leading up to MSM's cancellation of in-person/hands-on classes and instructions on or about March 23, 2020, Plaintiff and the Tuition and Fees Class attended physical classrooms to receive live in-person/hands-on classes and instruction, and MSM provided such in-person/hands-on classes and instruction.

85. Each day for the weeks, months, and years prior to the closure of campus, Plaintiff and Tuition and Fees Class had access to the full MSM campus and its facilities.

86. Accordingly, it is clear that MSM offered to provide live in-person/hands-on classes and instruction in a physical classroom along with the on-campus experience of campus life as described more fully above, and that Plaintiff and Tuition and Fees Class accepted that offer by paying tuition and fees and attending physical classrooms and rehearsals and receiving live in-person instruction in the Spring 2020 Semester.

87. Based on this mutual assent, Plaintiff and Tuition and Fees Class fulfilled their end of the bargain when they paid tuition and fees for the Spring 2020 Semester, either by paying out-of-pocket or by using student loan financing, or otherwise.

88. After accepting tuition and fees monies from Plaintiff and Tuition and Fees Class, and starting on or about March 23, 2020, MSM provided an entirely different product, which

deprived Plaintiff and Tuition and Fees Class of the benefit of the bargain for which they had already paid.

89. MSM retained tuition and fees monies paid by Plaintiff and Tuition and Fees Class, without providing them the full benefit of their bargain, even though MSM failed to provide the services for which the tuition and fees were collected, making MSM's retention unjust under the circumstances. Equity and good conscience require that MSM return a portion of the monies paid in tuition and fees to Plaintiff and Tuition and Fees Class.

FOR A SECOND COLLECTIVE CAUSE OF ACTION

(UNJUST ENRICHMENT)

90. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

91. Plaintiff brings this count on behalf of the Tuition and Fees Class (which includes the meal plan charges).

92. This claim is pled in the alternative to the first cause of action, in the event it is determined that the implied contract does not provide the requested relief.

93. Plaintiff and other members of the Tuition and Fees Class paid substantial Tuition and Fees for live in-person instruction in physical classrooms on a physical campus during the Spring 2020 Semester.

94. Plaintiff and other members of the Tuition and Fees Class conferred a benefit on MSM when they paid this tuition and fees.

95. MSM has realized this benefit by accepting such payment.

96. However, Plaintiff and members of the Tuition and Fees Class did not receive the full benefit of their bargain.

97. Instead, Plaintiff and members of the Tuition and Fees Class conferred this benefit on MSM in expectation of receiving one product, that being live in-person instruction in a physical classroom along with access to the physical campus as described more fully above, but were provided instead with a different product.

98. MSM has retained this benefit, even though MSM failed to provide the services for which the Tuition and Fees were collected, making MSM's retention unjust under the circumstances, and restitution appropriate.

99. Equity and good conscience require that MSM return a portion of the monies paid in tuition and fees to Plaintiff and other members of the Tuition and Fees Class.

FOR A THIRD COLLECTIVE CAUSE OF ACTION

(CONVERSION)

100. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

101. Plaintiff brings this count on behalf of the Tuition and Fees Class (which includes the meal plan charges) for tuition and fees related damages.

102. The two key elements of conversion are (a) Plaintiff's legal ownership or an immediate superior right of possession to a specific identifiable thing and (b) MSM's unauthorized dominion over the thing in question or interference with it, to the exclusion of Plaintiff's right.

103. Plaintiff and members of the Tuition and Fees Class have an identifiable legal ownership to the right and services of an in-person education and access to the physical campus facilities and paid tuition funds and fees for the same.

104. As set forth above, MSM has not provided those services or access, to the exclusion of Plaintiff's and other members of the Tuition and Fees Class's rights.

105. As set forth above, Plaintiff has not, to date, received from MSM a proper reimbursement for tuition and fees paid to MSM for the Spring 2020 Semester.

106. MSM has received and retained possession of Plaintiff's and other Tuition and Fees Class members' full payments for tuition and fees for the Spring 2020 Semester.

107. MSM's continued possession of the full payments for Spring 2020 Semester tuition and fees is adverse and in derogation of Plaintiff's and other Tuition and Fees Class members' entitlement to such funds.

108. MSM refuses to remit to Plaintiff and the Tuition and Fees Class reimbursement for tuition and fees paid for the Spring 2020 Semester.

109. MSM has therefore converted and continue to convert Plaintiff's and other Tuition and Fees Class members' Spring 2020 Semester tuition and fees.

FOR A FOURTH COLLECTIVE CAUSE OF ACTION

(VIOLATION OF NY GENERAL BUSINESS LAW § 349, *ET SEQ.*)

110. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

111. Plaintiff brings this count on behalf of herself and other members of the Tuition and Fees Class.

112. To assert a claim under New York General Business Law § 349 ("GBL § 349"), a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) the plaintiff suffered injury as a result of the allegedly deceptive act or practice.

113. Claims under GBL § 349 are not subject to the heightened particularity requirements of Federal Rules of Civil Procedure ("FRCP") Rule 9(b) but need only meet the bare-bones notice-pleading requirements of FRCP Rule 8(a).

114. Consumer-oriented conduct consists of acts or practices that have broader impact on consumers at large. Moreover, GBL § 349 does not require a repetition or pattern of deceptive behavior. Plaintiff may satisfy the consumer-oriented conduct requirement by showing that the conduct at issue potentially affects similarly situated consumers. Here, Plaintiff has properly pled that MSM, in presenting itself as an institution of higher learning for students to physically attend its campus in exchange for payment of tuition and fees, is engaged in consumer-oriented conduct.

115. The inquiry regarding whether an act or practice is materially misleading is whether, objectively, MSM's acts are likely to mislead a reasonable consumer acting reasonably under the circumstances. GBL § 349 does not require a deceptive practice to reach the level of common law fraud to be actionable, nor does it require proof of reliance. Fraudulent intent is not required, the material must only be misleading.

116. MSM advertises its in-person, on campus product to the public at large with the intent to induce prospective students to enroll at MSM in order to receive its on-campus product through, among other things, its website, academic catalogs, student handbooks, marketing materials and other circulars, bulletins, and publications. *See above* ¶¶ 20-35, 47, 55, 61.

117. Further, MSM's material representations and omissions were advertised to all prospective students, and Plaintiff and other members of the Tuition and Fees Class were entitled to a reasonable expectation of the same when they enrolled at MSM.

118. An actual injury claim under GBL § 349 typically requires a plaintiff to allege that, on account of a materially misleading practice, she purchased a product and did not receive the full value of her purchase.

119. Plaintiff has clearly alleged that, due to MSM's inaccurate representations, she paid substantial sums of money to MSM for the right to attend MSM in-person/on-campus and did not

receive the full value of what she purchased.

120. Had Plaintiff known that MSM's claims regarding the provision of the on-campus experience were false or subject to MSM's unilateral change without the provision of any refund, Plaintiff would not have paid the price for in-person, on-campus learning or the campus related fees.

121. These allegations are sufficient to state an injury under GBL § 349 because they claim that Plaintiff paid a premium for a product based on MSM's inaccurate representations. *See above ¶¶ 20-35, 47, 55, 61* for the inaccurate representations. Moreover, monetary loss is a sufficient injury to satisfy the requirement under GBL § 349, when that loss is independent of a loss caused by a breach of contract.

122. As a result of MSM's foregoing violations of GBL § 349, MSM has directly and proximately caused damage to Plaintiff and other members of the Tuition and Fees Class and are entitled to recover actual damages in an amount to be determined at trial, and an award of reasonable attorney's fees, expenses, costs and disbursements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against MSM as follows:

- A. Certifying the Tuition and Fees Class as proposed herein, designating Plaintiff as Tuition and Fees Class representative, and appointing undersigned counsel Gainey McKenna & Egleston as Tuition and Fees Class Counsel;
- B. Declaring that MSM is financially responsible for notifying the Tuition and Fees Class members of the pendency of this action;
- C. Declaring that MSM has wrongfully kept monies paid for Tuition and Fees;
- D. Requiring that MSM disgorge amounts wrongfully obtained for Tuition and Fees;

- E. Awarding injunctive relief as permitted by law or equity, including enjoining MSM from retaining the pro-rated, unused monies paid for Tuition and Fees;
- F. Scheduling a trial by jury in this action;
- G. Awarding Plaintiff reasonable attorney's fees, costs and expenses, as permitted by law;
- H. Awarding pre and post judgment interest on any amounts awarded, as permitted by law; and
- I. Awarding such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 13, 2020

GAINEY McKENNA & EGGLESTON

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